

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 05-00611 WHA

Plaintiff,

v.

**ORDER RE CAPITALIZATION
OF DEFENDANTS' NAMES**

DALE SCOTT HEINEMAN; KURT F.
JOHNSON; THE DOREAN GROUP;
WILLIAM JULIAN; FARREL J.
LECOMPTE, JR.; SARA J. MAGOON; and
CHARLES DEWEY TOBIAS,

Defendants.

Defendants Dale Scott Heineman and Kurt F. Johnson request to be set free and to be dismissed as defendants because they spell their names "Dale Scott Heineman" and "Kurt F. Johnson," whereas the indictment sometimes spells their names with only upper-case letters, *i.e.*, "DALE SCOTT HEINEMAN" and "KURT F. JOHNSON." Heineman and Johnson alternatively ask for an evidentiary hearing on their identities or for an order declaring that they are the defendants and requiring the indictment to be amended to change the capitalization style. The disagreement over capitalization provides no basis for any of the relief requested. The requests for relief are **DENIED**.

Heineman and Johnson claim that "DALE SCOTT HEINEMAN" and "KURT F. JOHNSON" do not identify them and denote instead two "Cestui Que Trusts."* They argue


* In reality, a cestui que trust is simply the beneficiary of a trust. Black's Law Dictionary (8th ed. 2004).)

1 therefore that they are being held for the alleged crimes of the cestui que trusts, in violation of
2 the Due Process Clause and the Sixth Amendment (Br. 2, 5). Defendants cite to no authority in
3 making their arguments. The government has remained constant in its position that the
4 defendants named in the indictment include Heineman and Johnson.

5 Defendants vigorously have persisted in this “misnomer” argument since they first
6 appeared before the Court. It is a creative endeavor based on a formalistic but fanciful
7 distinction. The emptiness of this argument must be clear by now. The Court gives the
8 indictment a reasonable construction, one that interprets the defendants’ names — whether
9 spelled using only upper-case letters or using both upper- and lower-case letters — to designate
10 the men who filed the instant request for relief. It is time that defendants turned their
11 considerable intelligence toward viable defense strategies.

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13 **IT IS SO ORDERED.**

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15 Dated: June 6, 2006

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17 _____
18 WILLIAM ALSUP
19 UNITED STATES DISTRICT JUDGE
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